

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR KENT COUNTY
COURT NO. 16**

**COURT ADDRESS:
480 BANK LN
DOVER DE 19904**

CIVIL ACTION NO: JP16-09-003606

DELAWARE STATE HOUSING AUTHORITY VS KELVIN MCDOWELL

**SYSTEM ID: @567317
KELVIN P MCDOWELL
#4 MIFFLIN MEADOWS LANE
DOVER DE 19901**

ORDER

A trial *de novo*, in reference to a Landlord/Tenant Summary Possession suit, was held on August 24, 2009 between Delaware State Housing Authority and Kelvin P. McDowell.

Plaintiff, Delaware State Housing Authority, was represented by Jeffrey Clark, Esquire.
Defendant, Kelvin P. McDowell, appeared *pro se*.

Judges Agnes E. Pennella, Dwight D. Dillard, and Michael P. Sherlock comprised the special court, pursuant to 25 Del. C. § 5717(a).¹

At issue is the Plaintiff's claim that the Defendant owes the Plaintiff \$2327.00 in back rent through the month of July as well as a per diem rate effective August 1, 2009 of \$17.37. Plaintiff testified the Defendant was delinquent in paying rent 3 times within a 12 month period, thus allowing the Plaintiff to terminate the Rental Agreement (Plaintiff's exhibit #1).² The agreement states rent is due on or before the first business day of each month, but since the rent is to be mailed to an out-of-state address, an additional grace period of 3 days³ is to be observed. According to the lease, Section 14(a)(3), **Procedures for Termination of Lease:**

"Management shall not terminate or refuse to renew this lease other than for good cause or for other serious or repeated violations of material terms of the lease, including but not limited to...(3) the making of three (3) late payments during any twelve (12) month period."

¹ 25 Del. C. § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 Justices of the Peace other than the Justice of the Peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote...

² Plaintiff's Exhibit #1. Lease Agreement signed by the Plaintiff and the Defendant dated June 1, 2007.

³ 25 Del. C. § 5501(d). *Tenant Obligations; rent*. ...The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office...shall extend the agreed on time for payment of the rent by 3 days beyond the due date.
6CF14J (Rev. 9/15/04)

The Plaintiff testified the November 2008 rent was due on November 1, 2008, late after the 6th, and received on the 14th. The December 2008 rent was due on December 1 2008, late after the 5th, and received on the 22nd. The March 2009 rent was due March 2, 2009, late after the 6th, and received on the 11th.

The Defendant testified that he was indeed late with the November 2008 and December 2008 rent, but argued the Plaintiff's assertion the March 2009 rent was late. Defense Exhibit #1 was a money order receipt, dated March 6, 2009. Defendant claimed that since he bought said money order on the 6th and mailed it out on the 6th, his rent should not be considered late. Defendant stated, "I believe that as soon as I buy the money order, rent is paid".

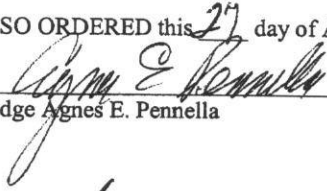
Based off the aforementioned, this special court finds in *favor of the Plaintiff*. Plaintiff presented a copy of the rental agreement stating that rent is due on or before the first day of each month AND that three (3) such instances of late payments shall result in the termination of said lease. Plaintiff presented testimony that there were three material violations of the late payment section of the lease. Defendant acknowledged that he was late with the November 2008 and December 2008 rent. Defendant presented evidence the money order for the March 2009 rent was purchased on March 6, 2009. According to evidence, rent was due in the office on March 5, 2009, but was received in the office on March 11, 2009. Therefore, the Defendant was in material breach of the lease agreement.

Judgment in the amount of \$2327.00

Per Diem in the amount of \$17.37

Possession to the Plaintiff

IT IS SO ORDERED this 27 day of August, 2009


Judge Agnes E. Pennella

(SEAL)

IT IS SO ORDERED this 27 day of August, 2009


Judge Michael P. Sherlock

(SEAL)

IT IS SO ORDERED this 27 day of August, 2009


Judge Dwight D. Dillard

(SEAL)